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10/750,217	01/02/2004	Keneth K. Cyr	CRNI.111419	6647

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EXAMINER	
SEREBOFF, NEAL	
ART UNIT	PAPER NUMBER
3626	

MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/750,217	CYR ET AL.	
	Examiner	Art Unit	
	NEAL R. SEREBOFF	3626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 December 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5,7-15,18-25 and 28-30* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5,7-15,18-25 and 28-30* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. In the amendment dated 12/19/2008, the following has occurred: Claims 1 – 5, 7 – 11, 14, 17 – 25 and 28 – 30 have been amended.

2. Claims 6, 16, 17, 26 and 27 have been previously canceled. Claims 1 - 5, 7 - 15, 18 - 25 and 28 - 30 are pending.

Notice to Applicant

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 101

4. Claims 1 – 5, 7 – 15, 18 – 25 and 28 – 30 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

5. Regarding claims 1 – 5 and 7 – 10, the claims appear to be software per se without any structural requirements. Since a computer program is merely a set of instructions capable of being executed by a computer, the computer program itself is not a process and USPTO personnel should treat a claim for a computer program, without the computer-readable medium needed to realize the computer program's functionality, as nonstatutory functional descriptive material. (MPEP §2106.01) Claims 2 – 5 and 7 – 10 are rejected for the same reason as they are dependent upon claim 1.

6. Claims 11 – 15, 18 – 25 and 28 – 30 are rejected under 35 U.S.C. 101 based on Supreme Court precedent, and recent Federal Circuit decisions, a § 101 process must (1) be tied to a particular apparatus or (2) transform underlying subject matter (such as an article or materials) to a different state or thing. Diamond v. Diehr, 450 U.S. 175, 184

(1981); Parker v. Flook, 437 U.S. 584, 588 n.9 (1978); Gottschalk v. Benson, 409 U.S. 63, 70 (1972); Cochrane v. Deener, 94 U.S. 780,787-88 (1876). The process steps in claims (11 – 15, 18 – 25 and 28 – 30) are not tied to a particular apparatus nor do they execute a transformation. Thus, they are non-statutory.

7. The Examiner reviewed the originally filed Specification to find machine descriptions.

- Regarding the term hardware as found in the Pre-Grant Publication paragraph 57, "Other Hardware." The term also appears within paragraph 23, "More specifically as shown each care provider may select preferred surgical instruments, anesthesiology drugs or equipment, implants, pharmaceuticals, stethoscope, thermometer or other diagnostic instruments or other supplies, material, ***pharmaceuticals or other hardware***, disposables or other material related to clinical care." (emphasis added) Therefore, the Examiner understands hardware as medically related pharmaceutical supplies and not computer equipment.
- Regarding the term computer as found in the Pre-Grant Publication paragraph 9, "Collective supply activities can not be effectively or comprehensively managed on today's information plat- forms, on the procurement side as well. While many hospitals and other facilities keep computerized records of clinical supplies present and available in given departments, no effective or integrated mechanism exists to order and replenish those supplies on demand." The Examiner notes that the computer is used within the background of the invention and not in relation to the invention itself.

- The term server does not appear.
- A database may be a filing cabinet, a piece of paper, a rolodex or a human brain.
- The supply selections may be on a physical preference card. (paragraph 23)

Claim Rejections - 35 USC § 112

8. Claims 1 – 5 and 7 – 10 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The claims have been amended to include "computerized" and specifically claim 1 now includes, "a computing device with computer memory containing computer-executable instructions." As detailed above, a computer is not found within the original specification.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. ***Claims 1 – 5, 7 – 15, 18 – 25 and 28 – 30*** are rejected under 35 U.S.C. 102(b) as being anticipated by DeBusk et al, U.S. Patent Number 5,991,728.

11. As per claim 1,

DeBusk teaches a computerized system, including a computing device with computer memory containing computer-executable instructions for managing clinically related supply procurement, comprising:

- A first interface to receive patient supply data captured from at least one clinically related site (figure 9, Delivery Care Event and column 15, lines 32 – 58), the patient supply data comprising items used by care providers (figure 7, surgeon) to treat one ore more patients (figure 7, patient id) consumed during a clinical event (figure 10 and column 16, line 19 - 39);
- A second interface to receive care provider preference data for said clinical event from the at least one clinically related site (figure 7 and column 11, lines 4 – 16);
- An analytic engine, the analytic engine communicating with the first interface and the second interface (column 17, lines 35 through column 18, line 40), the analytic engine generating an analytic report showing a percentage of the core providers that use a clinical item supplied by a particular vendor during the clinical event (column 18, line 9 through column 19, line 3 and further where the exact data listed within a report is considered non-functional descriptive information); and
- The display device to display a graphical user interface showing the analytic report (column 7, line 66 through column 8, line 25).

12. As per claim 2, DeBusk teaches the computerized system of claim 1 as described above. DeBusk further teaches the system wherein the patient supply data further comprises at least one of surgical device information, pharmaceutical information, and consumable material information (column 11, lines 39 - 64 for surgical device information).

13. As per claim 3, DeBusk teaches the computerized system of claim 1 as described above. DeBusk further teaches the system wherein the clinically related site comprises at

least one of a hospital facility, a research facility and a government facility (column 12, lines 1 – 15 hospital).

14. As per claim 4, DeBusk teaches the computerized system of claim 1 as described above. DeBusk further teaches the system wherein the care provider preference data comprises a preference card (column 11, lines 4 – 16).

15. As per claim 5, DeBusk teaches the computerized system of claim 1 as described above. DeBusk further teaches the system wherein the preference card comprises selections for at least one of surgical devices, pharmaceutical selections and consumable material selections (column 11, lines 17 – 64 where the card is used as a basis for surgical room resources).

16. As per claim 7, DeBusk teaches the computerized system of claim 1 as described above. DeBusk further teaches the system comprising the analytic report showing the percentage of the care providers that use the clinical item supplied by the particular vendor during the clinical event compared to the percentages of care providers that use clinical items supplied by one or more different vendors during the clinical event (column 18, line 9 through column 19, line 3 and further where the exact data listed within a report is considered non-functional descriptive information).

17. As per claim 8, DeBusk teaches the computerized system of claim 7 as described above. DeBusk further teaches the system comprising the analytic report comparing the price of the clinical item supplied by the particular vendor and the one or more different vendors based on volumetric pricing information (column 18, line 9 through column 19, line 3 and further where the exact data listed within a report is considered non-functional descriptive information).

18. As per claim 9, DeBusk teaches the computerized system of claim 1 as described above. DeBusk further teaches the system comprising the analytic report showing the percentage of the care providers that use the clinical item supplied by the particular vendor during the clinical event (column 18, line 9 through column 19, line 3 and further where the exact data listed within a report is considered non-functional descriptive information) broken down according to at least one of clinical procedure type, clinical department, patient demographic categories, and cost ranges (column 19, lines 4 – 37).

19. As per claim 10, DeBusk teaches the computerized system of claim 1 as described above. DeBusk further teaches the system wherein the care provider preference data is updated according to updated clinical supply policies (column 12, lines 1 – 15 where underutilized resources are excluded).

20. As per claim 11, DeBusk teaches a method for managing clinically related supply procurement, comprising:

- Receiving patient supply data captured from at least one clinically related site (figure 9, Delivery Care Event and column 15, lines 32 – 58), the patient supply data comprising items used by care providers (figure 7, surgeon) to treat one ore more patients (figure 7, patient id) during a clinical event (figure 10 and column 16, line 19 - 39);
- Performing comparisons between alternative supply selections (column 19, lines 4 - 30) wherein the comparisons comprise percentage of the core providers that use a clinical item supplied by a particular vendor during the clinical event (column 18, line 9 through column 19, line 3 and further where the exact data listed within a report is considered non-functional descriptive information);

- Generating a comparative report that shows the alternative supply selections from (column 19, lines 4 - 30); and
- Displaying the comparative report on a graphical user interface (column 7, line 66 through column 8, line 25).

21. As per claim 12, DeBusk teaches the method of claim 11 as described above. DeBusk further teaches the method wherein the patient supply data further comprises at least one of surgical device information, pharmaceutical information, and consumable material information (column 11, lines 39 - 64 for surgical device information).

22. As per claim 13, DeBusk teaches the method of claim 11 as described above. DeBusk further teaches the method wherein the clinically related site comprises at least one of a hospital facility, a research facility and a government facility (column 12, lines 1 – 15 hospital).

23. As per claim 14, DeBusk teaches the method of claim 11 as described above. DeBusk further teaches the method comprising receiving care provider preference data for said clinical event, wherein the care provider preference data comprises a preference card (column 11, lines 4 – 16).

24. As per claim 15, DeBusk teaches the method of claim 14 as described above. DeBusk further teaches the method wherein the preference card comprises selections for at least one of surgical devices, pharmaceutical selections and consumable material selections (column 11, lines 17 – 64 where the card is used as a basis for surgical room resources).

25. As per claim 18, DeBusk teaches the method of claim 11 as described above. DeBusk further teaches the method wherein the comparative report comprises price

comparisons of the clinical item supplied by the different vendors based on volumetric pricing information (column 18, line 9 through column 19, line 3 and further where the exact data listed within a report is considered non-functional descriptive information).

26. As per claim 19, DeBusk teaches the method of claim 11 as described above. DeBusk further teaches the method comprising a step of generating comparative reports showing the percentages of care providers that use the clinical item supplied by different vendors during the clinical event (column 18, line 9 through column 19, line 3 and further where the exact data listed within a report is considered non-functional descriptive information)broken down according to at least one of clinical procedure type, clinical department, patient demographic categories, and cost ranges. (column 19, lines 4 – 37).

27. As per claim 20, DeBusk teaches the method of claim 14 as described above. DeBusk further teaches the method comprising a step of updating the care provider preference data according to updated clinical supply policies (column 12, lines 1 – 15 where underutilized resources are excluded).

28. As per claim 21, DeBusk teaches a method for generating a clinically related supply policy, the method comprising:

- Receiving care provider preference data for a clinical event from a plurality of care providers (figures 7 and 8), wherein the care provider preference data includes a clinical item used to treat a patient during the clinical event (figure 10 and column 16, line 19 - 39);
- Performing comparisons showing a percentage of the care providers that prefer the clinical item supplied by a particular vendor based on the care provider preference data (column 18, line 9 through column 19, line 3);

- Generating a comparative report that shows the comparisons (column 19, lines 4 - 30); and
- Displaying the comparison report on a graphical user interface (column 7, line 66 through column 8, line 25).

29. As per claim 22, DeBusk teaches the method of claim 21 as described above. DeBusk further teaches the method wherein the clinical item comprises at least one of surgical device information, pharmaceutical information, and consumable material information (column 11, lines 39 - 64 for surgical device information).

30. As per claim 23, DeBusk the method of claim 21 as described above. DeBusk further teaches the method wherein the care provider preference data is retrieved from a clinically related site, the clinically related site comprises at least one of a hospital facility, a research facility and a government facility (column 12, lines 1 – 15 hospital).

31. As per claim 24, DeBusk teaches the method of claim 21 as described above. DeBusk further teaches the method wherein the care provider preference data comprises a preference card (column 11, lines 4 – 16).

32. As per claim 25, DeBusk in teaches the method of claim 24 as described above. DeBusk further teaches the method wherein the preference card comprises selections for at least one of surgical devices, pharmaceutical selections and consumable material selections (column 11, lines 17 – 64 where the card is used as a basis for surgical room resources).

33. As per claim 28, DeBusk teaches the method of claim 11 as described above.

DeBusk further teaches the method wherein the comparative report comprises care provider preference data and alternative vendor supply selections (column 6, lines 1 - 67 where the exact data within the report represents non-functional descriptive information).

34. As per claim 29, DeBusk teaches the method of claim 21 as described above. DeBusk further teaches the method wherein the comparative reports broken down according to at least one of clinical procedure type, clinical department, patient demographic categories, vendor information and cost ranges (column 19, lines 4 – 37).

35. As per claim 29, DeBusk teaches the method of claim 21 as described above. DeBusk further teaches the method wherein the method further comprises updating the care provider preference data according to updated clinical supply policies (column 12, lines 1 – 15 where underutilized resources are excluded).

Response to Arguments

36. Applicant's arguments, see Objections, filed 12/19/2008, with respect to the specification have been fully considered and are persuasive. The Objection of the specification has been withdrawn.

37. Applicant's arguments, see 35 U.S.C. 112 rejections, filed 12/19/2008, with respect to claims 1 – 5, 7 – 15, 18 – 25 and 28 - 30 have been fully considered and are persuasive. The 35 U.S.C. 112 rejections of claims 1 – 5, 7 – 15, 18 – 25 and 28 - 30 has been withdrawn.

38. Applicant's arguments filed 12/19/2008 have been fully considered but they are not persuasive.

- Please see the updated but similar 35 U.S.C. 101 rejection above.

- The Applicant has amended the three independent claims. These amendments effectively removed the functionality from the reported data and therefore made the display of information non-functional. In so doing, the need for a second reference was eliminated. Therefore, Applicant arguments that are directed toward 35 U.S.C. 103 or toward the Heimermann reference are considered moot. Additionally, arguments made by the applicant that DeBusk fails to anticipate/ make obvious this non-functional data is not persuasive.
- The Applicant is reminded that the intended use of the Applicant's invention may be different than the reference. The DeBusk reference still anticipates the instant invention even though the intended use differs from the Applicant's.

Conclusion

39. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEAL R. SEREBOFF whose telephone number is (571)270-1373. The examiner can normally be reached on Mon thru Thur from 7:30am to 5pm, with 1st Fri off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Luke Gilligan can be reached on (571) 272-6770. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/N. R. S./
Examiner, Art Unit 3626
1/28/2008

/C Luke Gilligan/
Supervisory Patent Examiner, Art Unit 3626